

## FEDERAL RULES OF APPELLATE PROCEDURE

**Rule 27. Motions****(a) In General.**

- (1) **Application for Relief.** An application for an order or other relief is made by motion unless these rules prescribe another form. A motion must be in writing unless the court permits otherwise.

**(2) Contents of a Motion.**

- (A) **Grounds and relief sought.** A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.

**(B) Accompanying documents.**

- (i) Any affidavit or other paper necessary to support a motion must be served and filed with the motion.
- (ii) An affidavit must contain only factual information, not legal argument.
- (iii) A motion seeking substantive relief must include a copy of the trial court's opinion or agency's decision as a separate exhibit.

**(C) Documents barred or not required.**

- (i) A separate brief supporting or responding to a motion must not be filed.
- (ii) A notice of motion is not required.
- (iii) A proposed order is not required.

**(3) Response.**

- (A) **Time to file.** Any party may file a response to a motion; Rule 27(a)(2) governs its contents. The response must be filed within 10 days after service of the motion unless the court shortens or extends the time. A motion authorized by Rules 8, 9, 18, or 41 may be granted before the 10-day period runs only if the court gives reasonable notice to the parties that it intends to act sooner.

- (B) **Request for affirmative relief.** A response may include a motion for affirmative relief. The time to respond to the new motion, and to reply to that response, are governed by Rule 27(a)(3)(A) and (a)(4). The title of the response must alert the court to the request for relief.

- (4) **Reply to Response.** Any reply to a response must be filed within 7 days after service of the response. A reply must not present matters that do not relate to the response.

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**Rule 27. Motions****(a) Content of Motion.** The preferred content and organization of a motion is:

- (1) The name of this court.
- (2) The caption. If the motion is for a procedural order on consent, the authorized abbreviated caption may be used. For any other motion, the official caption must be used.
- (3) The title of the motion.
- (4) The grounds for the motion, the relief sought, and the legal argument to support the motion.
- (5) The movant's statement of consent or opposition to the motion. The movant must state in the motion that the movant has discussed the motion with the other parties, whether any party will object, and whether any party will file a response. A party withholding consent when the motion is made will nevertheless be deemed to have consented if that party fails to file a response within the time permitted by Federal Rule of Appellate Procedure 27(a)(3)(A).
- (6) Counsel's or pro se party's signature.
- (7) The certificate of interest. The certificate of interest (see Federal Circuit Rule 47.4) must be included in each motion.
- (8) Supporting affidavit. If the facts relied on in the motion are subject to dispute, an affidavit or unsworn declaration under penalty of perjury under 28 U.S.C. § 1746 must be attached to the motion.
- (9) The proposed order. In a motion for a procedural order in which the moving party states that the parties have consented, a proposed order incorporating a service list must be attached.
- (10) The proof of service. (See Federal Rule of Appellate Procedure 25(d).)

**(b) Response; When Filed; Content.** If a motion states that it is consented to or unopposed, a response is not required. If a motion does not state whether — or incorrectly states that — it is consented to or unopposed, a response should be filed as soon as the omission or error becomes known. The preferred organization of a response is:

- (1) as provided in (a)(1), (2), (6), (7), (8), (9) and (10) of this rule; and
- (2) The grounds for denying the motion, limiting the relief granted, or modifying the order sought, and the legal argument to support the response; or the

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**(b) Disposition of a Motion for a Procedural Order.** The court may act on a motion for a procedural order — including a motion under Rule 26(b) — at any time without awaiting a response, and may, by rule or by order in a particular case, authorize its clerk to act on specified types of procedural motions. A party adversely affected by the court's, or the clerk's, action may file a motion to reconsider, vacate, or modify that action. Timely opposition filed after the motion is granted in whole or in part does not constitute a request to reconsider, vacate, or modify the disposition; a motion requesting that relief must be filed.

**(c) Power of a Single Judge to Entertain a Motion.** A circuit judge may act alone on any motion, but may not dismiss or otherwise determine an appeal or other proceeding. A court of appeals may provide by rule or by order in a particular case that only the court may act on any motion or class of motions. The court may review the action of a single judge.

**(d) Form of Papers; Page Limits; and Number of Copies.**

**(1) Format.**

**(A) Reproduction.** A motion, response, or reply may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

**(B) Cover.** A cover is not required but there must be a caption that includes the case number, the name of the court, the title of the case, and a brief descriptive title indicating the purpose of the motion and identifying the party or parties for whom it is filed.

**(C) Binding.** The document must be bound in any manner that is secure, does not obscure the text, and permits the document to lie reasonably flat when open.

**(D) Paper size, line spacing, and margins.** The document must be on 8 1/2 by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

**(2) Page Limits.** A motion or a response to a motion must not exceed 20 pages, exclusive of the corporate disclosure statement and accompanying documents authorized by Rule 27(a)(2)(B), unless the court permits or directs otherwise. A reply to a response must not exceed 10 pages.

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responding party's statement of consent or lack of opposition.

**(c) Content of Reply.** The preferred organization of a reply is comparable to the organization of a motion as provided in (a) of this rule and the preferred content of the reply is:

(1) as provided in (a)(1), (2), (6), (7), (8), (9) and (10) of this rule; and

(2) The reply to the response and the legal argument to support it.

**(d) Length of Motion, Response, or Reply; Covers and Backing.** Items listed in Federal Circuit Rule 27(a)(7)-(10) do not count toward the page limitation in Federal Rule of Appellate Procedure 27(d)(2). Cover and backing for a motion, response, or reply are prohibited.

**(e) Motion to Strike; Response.** A motion to strike all or part of a brief, except to strike scandalous matter, is prohibited as long as the party seeking to strike has the right to file a responsive brief in which the objection could be made. A response, if any, in opposition to a motion to strike must be included in the responsive brief if one is authorized, or may be filed if leave is sought and obtained, or may be made at oral argument.

**(f) Motion to Dismiss or to Remand; Response.** A motion to dismiss for lack of jurisdiction or to remand should be made as soon after docketing as the grounds for the motion are known. After the appellant or petitioner has filed the principal brief, the argument supporting dismissal for lack of jurisdiction or remand should be made in the brief of the appellee or respondent. A response in opposition, if any, should be included in the responsive brief. Joint or unopposed motions or stipulations to dismiss or to remand may be made at any time.

**(g) Motion Incorporated in a Brief.** Except as provided in Federal Circuit Rule 27(e) and (f), a motion must not be incorporated in a brief.

**(h) Delegation of Authority to the Clerk.** This clerk is authorized to act on consented to or unopposed motions to:

(1) dismiss an appeal, petition for review, or application for an extraordinary writ, with or without prejudice to reinstatement;

(2) remand or transfer a case;

(3) reinstate a case that was dismissed by the clerk for failure to comply with the rules;

(4) extend for not more than 30 days the time for taking any action required or permitted by the rules or an order of the court;

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- (3) **Number of Copies.** An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case.
- (e) **Oral Argument.** A motion will be decided without oral argument unless the court orders otherwise.

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- (5) extend the time for a court reporter to file the transcript of the trial proceedings with the clerk of the district court;
- (6) stay issuance of a mandate for not more than 30 days pending application to the Supreme Court of the United States for a writ of certiorari;
- (7) consolidate appeals;
- (8) correct a brief or other paper;
- (9) correct or modify a record in accordance with Federal Rule of Appellate Procedure 10(e) or 16(b);
- (10) stay further proceedings;
- (11) withdraw or substitute an appearance;
- (12) advance or continue a case;
- (13) file a supplemental appendix of material inadvertently omitted from the joint appendix; or
- (14) proceed in forma pauperis.
- (i) **Ex Parte Application.** Neither the court nor any judge of the court will conduct an ex parte hearing on an application for relief.
- (j) **Copies in an En Banc Case.** When an appeal is pending before the court en banc, motions and responses must be filed in an original and 14 copies.
- (k) **Application for Consideration, Vacation, or Modification of Procedural Order.** A party adversely affected by a procedural order entered on a motion without awaiting the response time or by an order of the clerk may move for relief within 14 days of the order or action. The application must be made by motion.
- (l) **Review or Reconsideration of the Order of a Single Judge or Panel of Judges.** Except for a dispositive order issued by a panel, which time will be governed by Federal Rule of Appellate Procedure 40(a)(1), a party seeking review by the court of the action of a single judge or reconsideration of the action of a panel of judges must file a motion for reconsideration within 14 days of the entry of the order.
- (m) **Motion Papers Containing Material Subject to a Protective Order.**
- (1) **Two Sets of Motion Papers.** If a party refers in motion papers to material subject to confidentiality mandated by statute or to a judicial or administrative protective order, two sets of motion papers must be filed.
- (A) Confidential set; labeling; number of copies. One set of motion papers, consisting of the original and three copies, must be labeled

“confidential” and filed with the court. If confidentiality will end on a date certain or upon the happening of an event, this must be stated on the cover, e.g., “CONFIDENTIAL UNTIL [DATE],” or “CONFIDENTIAL DURING JUDICIAL REVIEW.” Each page containing confidential material must enclose this material in brackets or indicate this material by highlighting.

(B) **Nonconfidential set; labeling; number of copies.**

The second set of motion papers, consisting of the original and three copies from which confidential matter has been deleted, must be labeled “nonconfidential” and filed with the court. Each page from which material subject to a protective order has been deleted must bear a legend so stating. The introductory paragraph of the nonconfidential motion or response must describe the general nature of the confidential material that has been deleted.

(2) **Service.** Each party to the appeal must be served two copies of the nonconfidential motion papers and, when permitted by the applicable protective order, two copies of the confidential motion papers.

(3) **Availability to the Public.** The confidential motion papers will be made available only to authorized court personnel and must not be made available to the public. After 5 years following the end of all proceedings in the court, the parties may be directed to show cause why confidential motion papers (except those protected by statute) should not be made available to the public.

## ***Practice Notes***

**Form Requirements.** See Federal Circuit Rule 32(f) for form requirements for motions, responses, and replies, and other documents.

**Content of a Motion, Response, or Reply.** Using Federal Circuit Rule 27’s preferred content and organization for a motion, response, or reply will help avoid delays caused by the need for additional information. Although motions, responses, and replies need not have the formality of briefs, a motion, response, or reply may be rejected if it is not substantially complete.

**Moot Response.** A response to a motion for a procedural order that is received after the motion has been acted on is considered moot.

**Limits on Consent Motions; Motions Referred to Panel.** Neither the clerk nor the court is required to grant relief just because the parties agree it should be granted. The clerk’s authority to act on specified motions includes the authority to grant the requested relief in whole or part or to refer the motion to a judge or panel. Once a case is assigned to a panel, the clerk refers all motions to the panel.

**Motion to Dismiss.** The court encourages a motion to waive Federal Circuit Rule 27(f) in a petition for review under 38 U.S.C. § 502.

**Telephone Inquiry About Pending Motions.** Telephone inquiries about pending motions are discouraged, because they divert the staff from more pressing duties. When an order on a motion directs counsel to take prompt action, the clerk’s office will telephone counsel. All other orders on motions are considered routine, and counsel may await notification by mail. Under no circumstances should anyone telephone a judge or the office of the senior staff attorney about a motion. In an emergency, call the clerk’s office.